IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 279 of 1999
in
SPECIAL CIVIL APPLICATION No. 1172 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARROW CHEMICAL PRODUCTS PRIVATE LIMITED
Versus
GUJARAT STATE FINANCIAL CORPORATION

Appearance:
MR NK MAJMUDAR for Appellant

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA
Date of decision: 12/12/2000

ORAL JUDGEMENT (Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this appeal under clause 15 of the Letters Patent, the appellant has challenged the legality of judgment dated March 1, 1999 rendered by the learned Single Judge in Special Civil Application No. 1172 of 1997 by which, prayer made by the appellant to set aside the auction of the property belonging to the appellant for dues of Gujarat State Financial Corporation, is rejected.

2. The appellant had approached Gujarat State Financial Corporation [`GSFC' for short] to obtain financial term loan to set-up its industry. After scrutinizing the application and the relevant documents, GSFC had sanctioned term loan of Rs. 36.64 Lacs on November 20, 1992. As per the terms and conditions stated in the sanction order, the appellant was required to repay the principal amount of the term loan together with interest @ 20.5% per annum by equal instalments regularly. The appellant availed of the loan facility to the extent of Rs. 27.48 lacs, and therefore, undrawn loan of Rs. 9.16 lacs was cancelled by the GSFC vide letter dated October 24, 1994. The record of the case indicates that from the beginning, the appellant remained careless and negligent in repayment of principal amount as well as interest thereon. The GSFC had to issue demand letters and telegrams dated March 16, 1994; July 14, 1994; August 8, 1994; December 3, 1994; March 2, 1995; April 19; 1995; July 25, 1995 and August 25, 1995 calling upon the appellant to pay the amount due, but inspite of receipt of these letters, the appellant remained totally negligent and careless in clearing dues of GSFC. Therefore, the GSFC issued notice dated January 9, 1995 under section 29 of the State Financial Corporations Act, 1951 [`the Act' for short] and demanded dues of Rs. 32,51,257/= from the appellant. On receipt of the notice, the appellant made representation for rehypothecation of the Unit. However, GSFC, by letter dated August 7, 1995 rejected the proposal of the appellant for the reasons stated therein. After rejection of the proposal of the appellant, the appellant remained totally careless and no steps were taken to clear the outstanding dues. Therefore, the GSFC was again obliged to issue notice under Section 29 of the Act on August 7, 1999 by which appellant was called upon to pay outstanding amount of Rs. 37,87,020/=. In the said notice, it was specifically mentioned that failure on the part of the appellant to clear the dues would result into sale of assets hypothecated and mortgaged to GSFC. On receipt of notice, the appellant made another representation for reschedulement on September 4, 1995, but after considering the request made by the appellant,

the GSFC rejected the same vide letter dated September 26/27, 1995. In the meanwhile, State Bank of Saurashtra, Ankleshwar Branch issued a public notice in daily newspaper `Gujarat Samachar' on August 11, 1995 in respect of unit of the appellant and warned the people not to deal with the properties of the appellant described therein, as the charge of the bank was created over the said properties. On issuance of notice, the GSFC learnt that the properties which were hypothecated and mortgaged to GSFC by the appellant were under charge of State Bank of Saurashtra and the appellant was trying to dispose of the properties, and therefore, public notice was required to be issued by the State Bank of Saurashtra. The appellant did not make payment nor responded to the notices, and therefore, ultimately GSFC had taken over possession of the properties of the appellant on November 8, 1995 in exercise of the power under Section 29 of the Act. Thereafter, an advertisement was issued in daily newspaper `Vyapar' on December 20, 1995 inviting tenders for sale of hypothecated and mortgaged properties of the appellant. From the reply affidavit filed by the GSFC, it is evident that the valuation of the land, building, plant and machinery which were hypothecated and mortgaged to GSFC was done by Mr. K.M Khatri, Government Approved Valuer and as per his valuation report dated December 20/30, 1995, the valuation of the properties was Rs. 20,41,510/=. On receipt of tenders, a meeting of the Tender Committee was held on January 12, 1996. The Committee rejected the offers received as they were very low and decided to go for readvertisement. Thereafter, again another advertisement was issued on February 5, 1996 in daily newspaper `Times of India', in response to which eight offers were received. The Tender Committee in its meeting which was held on February 28, 1996 considered the offers and negotiated with the parties. Thereafter, offer of Messrs. Gondwala Explochem Private Limited, Nagpur for Rs. 26.00 lacs on certain terms and conditions, was accepted. The sale letter dated February 28, 1996 was also issued in favour of the said purchaser. The purchaser was also required to make down payment of Rs. 9,10,000/= within 30 days and the remaining amount of Rs. 16,90,000/= within a period of three years in twelve quarterly instalments, together with interest 21% per annum. However, the said purchaser failed to make payment of Rs. 9,10,000/=. Therefore, the GSFC by letter dated April 10, 1996 cancelled the sale letter and informed the said purchaser accordingly. It may be mentioned that the earnest money deposited by the purchaser was also ordered to be forfeited. In these circumstances, again another advertisement was issued by

the GSFC in `Gujarat Samachar' daily dated May 6, 1996 pursuant to which only one offer was received for Rs. 5.25 lacs. The Tender Committee in its meeting which was held on May 29, 1996 rejected the said offer and decided to go for yet another advertisement. Thereafter, fourth advertisement was issued on July 3, 1996 in `Gujarat Samachar' as well as `Times of India' and in response thereto, three offers were received. The Tender Committee in its meeting held on July 25, 1996 rejected all the offers because the highest offer was only for Rs. 9.61 lacs and decided to go for readvertisement for sale of properties belonging to the appellant. Again, fifth time advertisement was issued in local daily newspaper `Vyapar' on August 7, 1996 pursuant to which two offers were received. The Tender Committee in its meeting which was held on August 31, 1996 called the parties for negotiations and ultimately, the highest offer of Rs. 12,90,000/= of the respondent no. 2 was accepted and a sale letter dated September 3, 1996 was also issued in favour of the respondent no. 2. Feeling aggrieved by the sale of the properties to the respondent no. 2, the appellant instituted Special Civil Application No. 1172 of 1997 and prayed the Court to set-aside the sale effected in favour of the respondent no. 2. The learned Single Judge dismissed the petition by order dated March 1, 1999. However, in the petition, the appellant had shown readiness and willingness to repurchase the property for an amount of Rs. 14,00,000/=, and therefore, in order to test the bona fides of the appellant, the learned Single Judge gave the following directions :-

> "3. Mr. Majmudar states that his client is willing to pay more price than what was offered. He shall see that his client deposits an amount of Rs. 15,00,000/= [Rupees Fifteen lacs only] in this Court within a period of one week. After the amount is deposited, respondent-Corporation must be directed to deposit the amount. If there is non compliance of this order, this petition shall stand dismissed automatically."

3. The order dated March 1, 1999 passed by the learned Single Judge which is quoted above is subject matter of challenge in the present appeal.

4. The learned counsel for the appellant submitted that before selling the properties belonging to the appellant to the respondent no. 2, no notice was issued to the appellant and as the directions given by the

Supreme Court in case of Mahesh Chandra v. The Regional Manager, Uttar Pradesh Financial Corporation & Ors., AIR (1993) SC 935, were not complied with, the petition filed by the appellant ought to have been accepted by the learned Single Judge. Elaborating the said argument, the learned counsel emphasized that as stated in the rejoinder affidavit, the appellant was staying at Mathura where no notice was served by the GSFC regarding sale of the properties belonging to the appellant, and therefore, the action under section 29 of the Act having been taken in complete breach of principles of natural justice, the same ought to have been set-aside by the learned Single Judge. Learned counsel pleaded that the direction given by the learned Single Judge to the appellant to deposit an amount of Rs. 15 lacs in the Court within a period of one week should not have been granted more particularly when the action which was taken by the respondents-Corporation under section 29 of the Act was illegal and bad in law.

5. We have heard the learned counsel for the appellant and taken into consideration the documents forming part of the petition. The fact that appellant did not repay the amount of Rs. 37,87,020/= which was due as on August 1, 1995 is not in dispute. Again, it is not in dispute that the appellant was served with a notice dated August 7, 1995 under section 29 of the Act. From the averments which have been made in the affidavit-in-reply filed on behalf of GSFC as well as facts narrated above, it is evident that sincere efforts were made by the GSFC to obtain the best price for the properties belonging to the appellant. Therefore, the action of the Corporation to sell the properties to the respondent no. 2 for an amount of Rs. 12,90,000/= cannot be said to be illegal or arbitrary. The Supreme Court in several decisions has held that the judgment in the case of Mahesh Chandra [Supra], was given considering the facts of that case only. The law on the point has been clearly stated by the Supreme Court in its decisions rendered in (i) UP Financial Corporation & Ors. v. Naini Oxygas Acetylene Gas Limited & Anr., {1995} 2 SCC 754; (ii) Karnataka State Financial Corporation v. Allied Products (P) Limited, [1996] 5 SCC 65; (iii) Orissa State Financial Corporation v. Hotel Jaypee, 1996 (5)SCC 357. Having regard to the facts of the case, we are of the opinion that after service of notice under section 29 of the Act, it is not necessary to give further notice to the defaulter for the sale of the properties. The judgment in case of Mahesh Chandra [Supra] provides only broad guidelines and the sale effected would not stand vitiated if notice under section

29 of the Act is not given to the defaulter. It may be stated that the appellant has claimed that Mr. G.P Shorawalla who was Managing Director of the appellant Company was residing at Mathura and Mr. Shorawalla has admitted in terms in paragraph 4.4 of the rejoinder affidavit that he could not comply with the notice as he was busy with his own domestic difficulties. This means that notice was served on the Managing Director of the Company regarding dues of the appellant. Moreover, when the dues were not paid and action under section 29 of the Act was threatened, it was the duty of the Managing Director to keep track of the action which was proposed to be taken by the Corporation. Therefore, he cannot be heard to say that he was not served at Mathura before selling the properties to the respondent no.2, and therefore, the sale is vitiated. The reply affidavit would indicate that after hypothecating and mortgaging the properties with the GSFC, the appellant had created charge in favour of the State Bank of Saurashtra, Ankleshwar Branch which is nothing but a fraud. Such a charge could not have been created without informing the GSFC or without taking prior approval of the GSFC. The appellant having failed to pay the dues of the GSFC, cannot be permitted to challenge the sale effected in favour of the respondent no. 2 on the ground that guidelines laid down by the Supreme Court in case of Mahesh Chandra [Supra] were not followed by the GSFC.

6. So far as direction given by the learned Single Judge to the appellant to deposit Rs. 15 lacs is concerned, we notice that in the petition itself, the appellant had made a statement on oath that he was ready and willing to repurchase his properties for a sum of Rs. 14 lacs. Having regard to the facts of the case, the learned Single Judge thought it fit to test the bonafides of the appellant by directing it to deposit a sum of Rs. 15 lacs in the Court within a period of one week from the date of the order. It is an admitted position that the appellant has not deposited the amount in the Court, as directed by the learned Single Judge. This itself belies the claim of the appellant that the appellant was ready and willing to purchase the property for more sum than Rs. 12,00,000/= which consideration was paid by the respondent no.2. On overall view of the matter, we are of the opinion that the learned counsel for the appellant has failed to point out any error in the impugned order necessitating our interference in the present appeal. The appeal, therefore, cannot be entertained and is liable to be rejected.

7. For the foregoing reasons, this appeal fails and

is summarily dismissed.

[J.M Panchal, J.]

[A.M Kapadia, J.]

Prakash*